HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.Nos.6035, 11926 of 2001 and 1774 of 2002

Dated 19th day of September, 2007

W.P.No.6035 of 2001

Between:

Kottu Narayan Rao
and 59 others .. Petitioners

And

The Municipal Council, Tadepalligudem,
West Godavari District rep. by its
Commissioner .. Respondent

W.P.No.11926 of 2001

Between:

Singamsetty Vishnu Murthy
and four others .. Petitioners

And

The Municipal Council, Tadepalligudem,
West Godavari District rep. by its
Commissioner .. Respondent

W.P.No.1774 of 2002

Between:

Nandyala Krishna Murthy
and seventeen others .. Petitioners

And

The Municipal Council, Tadepalligudem,
West Godavari District rep. by its

Commissioner ..
Respondent

COMMON ORDER:

As the question of fact and law involved in these three writ petitions are one and the same, these matters are taken up together for disposal by this common order.

These writ petitions are filed seeking a mandamus to declare the action of the respondent-Municipal Council, in enhancing the licence fees for the petitioners' shops situated at Brahmananda Reddy Market (Santha Market), Tadepalligudem, West Godavari District, which is ten times more than the licence fees for the year 1999-2000, as arbitrary and illegal.

The petitioners assert that they are vendors owning small shops in Brahmananda Market, Tadepalligudem Municipality and as their shops are located within the area of operation of Tadepalligudem Municipality, they have been paying rents for more than 50 years. Now, their grievance is that the respondent, without giving any prior notice, issued demand notices to them enhancing licence fees ten times more than the usual licence fee and directed them to pay the same, failing which, their shops would be pulled down.

The respondent has filed counter affidavit *inter alia* denying the affidavit averments and stated that the lands where the petitioners' shops are located belong to the Tadepalligudem Municipality, and as the petitioners are encroachers and established shops from time

immemorial, the respondent is collecting rents/encroachment fees from them. It is further stated that as per the instructions issued by the Government in G.O.Rt.No.21, dated 5.1.1996, only the rates/encroachment fees are enhanced.

Heard the learned counsel for both the parties and perused the material placed on record.

Evidently, the Municipality is the owner of the land in which the shops of the petitioners are located, as such, the Municipality continues to be the owner not only of the buildings but also of the open land and it can certainly collect the rent or compensation for the use of its land, open or otherwise. Further it is also entitled to collect such charges for the right to expose goods for sale in a municipal market. Hence, this Court is of the view that the collection of rents/encroachment fees by the respondent cannot be said to be arbitrary. However, as it appears from the material placed on record that the charges now imposed are ten times more than the usual rents/encroachment fees, it is for the Municipality to consider whether any such charge is really called for. However, this Court cannot go into that aspect, having regard to the fact that the Municipality is only acting upon the instructions issued by the Government of A.P. in G.O.Rt.No.21, dated 5.1.1996. In fact, according to G.O.Rt.21, dated 5.1.1996, on the basis of the study made by a Committee constituted for the purpose of collection of taxes, non-taxes and other fees, a report was submitted, according to which, suggestions are made to fix the minimum and maximum rates on the Dangerous and Offensive Traders, etc. The Government, having accepted the proposals, directed the Commissioners of all Municipalities in the State to adopt those rates scrupulously with effect from 1.4.1996. It appears that following the instructions given in the G.O.Rt.No.21, the Municipal Council passed a Resolution, and thus, the said rates have come into force.

In the instant case, the petitioners, instead of questioning G.O.Rt.No.21, have simply questioned the action of the respondent-Municipal Council, in enhancing the licence fees for the petitioners' shops as expressly illegal. Inasmuch as the enhancement of licencee fees is pursuant to the instructions issued by the Government, this Court is of the view that the petitioners should have questioned G.O.Rt.No.21 and consequently questioned the action of the respondent.

Hence, I see no merits in these writ petitions and the same are accordingly dismissed. However, if the petitioners so chose, they may question the instructions issued by the Government in G.O.Rt.No.21, dated 5.1.1996. No costs.

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19.09.2007

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